

**U.S. Department of Commerce
Bureau of Industry and Security**

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**Remarks of
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Assistant Secretary for
Export Enforcement
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Good afternoon, and thank you for coming today. I always appreciate the chance to say a few words on compliance and enforcement to a group of industry practitioners, and especially so when there are so many colleagues and friends in the audience.

We at BIS know you have a tough job as compliance managers, but your expertise and professionalism are invaluable not only to your companies, but are key to achieving our shared objective of an effective and efficient export control system.

As I mentioned at last year's Update, I started my career here at the Bureau of Export Administration, BIS's predecessor, in the early 1980's. That was a time of change and growth in export control regulation, but certainly nothing in comparison to what we are trying to achieve today.

Now, the President is personally interested in our discipline, and it was that interest that really started the ball rolling on Export Control Reform. Since my confirmation as Assistant Secretary, I have been particularly impressed by the energy and creativity of our team, led by Under Secretary Hirschhorn and Assistant Secretary Wolf, in driving some of the key elements of the reform effort, as well as by our dedicated BIS staff and the attorneys in our Chief Counsel's Office.

Having observed the evolution of the export control system over the years, the challenge of changing attitudes and institutions that have evolved over decades is no small job. But it is a job that needs to be done, and Export Enforcement is no exception.

You'll notice that I used the word "discipline" to refer to export controls. That is no accident. What we do is based on certain clear and shared principles, which have been reinforced by precedent and practice. Understanding that can help us to set priorities, improve our performance, and meet our goals without being a captive of what has gone before.

I have given much thought to this in the Enforcement dimension of BIS, and have motivated my staff to look at our processes in a new and original light.

We place a great deal of emphasis on the quality of our work, but also on efficiency and level of service, and are continually reviewing the range of enforcement activities in our three offices - Export Enforcement, Enforcement Analysis, and Anti-boycott Compliance - with an eye toward

eliminating inefficient processes and providing more visibility and predictability in executing our mandate.

We in the enforcement role in BIS also understand the need to reach out to industry practitioners in order to adjust our processes and initiatives to a quickly evolving international business environment.

Supporting our national security mission has always been the first priority, but how effective we are in executing this mission depends on our knowledge of how international commerce works, as well as on cooperation with U.S. exporters.

I am also a strong supporter of outreach and information aimed at small to medium sized business. Export control requirements can be complicated and demanding. While our Administration is making great efforts to simplify and streamline the process, understanding all the elements remains a challenge.

However, solid compliance should not need large, dedicated staffs and frequent recourse to costly outside counsel.

Striking the right balance between compliance, enforcement and the competitiveness of our exporting community is critical, and as a result, we seek to broaden a two-way dialogue on key control and enforcement issues.

One important area of our responsibilities in which we have made progress is the review of voluntary self-disclosures or VSD's. VSD's are a pivotal element of compliance. We recognize that internal compliance procedures and processes can occasionally fail, even in well managed enterprises.

This is especially true when business models are swiftly evolving in a highly competitive global environment. As a result, we continue to afford great weight mitigation to VSD's, as we have in the past, and most are resolved with warning letters or no action.

A review of lead times for VSD resolution showed that the review cycle for VSD's was not only lengthy, but varied according to the OEE field office responsible for processing them. In order to address this, we have centralized the review process for VSD's in headquarters, which has resulted in more consistent and speedier resolution.

While the complexity of VSD's vary considerably, the review times for the less egregious cases, which make up the great majority of them, have been reduced by half since this policy was introduced.

In the last fiscal year (that is, FY 10), 226 VSD's were closed. Of these, 19% were found not to involve any actual violation, and 67% resulted in warning letters only. Only 6% resulted in administrative sanctions. In the first three quarters of this fiscal year, we received 193 VSD's; so the rate of disclosures is roughly the same.

I think this demonstrates our commitment to granting substantial mitigation to VSD's, in particular those that involve technical violations and where an effective control program is in place.

The Office of Anti-boycott Compliance plays a vital role in protecting American business from foreign boycotts. U.S. firms may not participate in foreign economic boycotts that are counter to U.S. foreign policy; these typically involve the Arab League boycott of Israel.

OAC, like the rest of BIS, has been looking at its own procedures to find ways of improving speed and efficiency. Under the EAR, U.S. companies are obliged to report any boycott-related language encountered in customer documentation to OAC. These boycott report forms are now downloadable from the BIS website, but must be printed, filled in manually, and returned to OAC by mail.

In our effort to improve our processes, OAC has been working with the Office of the Chief Information Officer to include these reports as fillable reports on the BIS website. When this project is complete, companies will be able to submit the required information electronically, saving significant time and resources.

In recent years, Enforcement at BIS has focused considerable effort on the on disruption of overseas procurement networks. A major tool to do this has been the BIS Entity List. As an example, the Mayrow and related investigations, which involved components for improvised explosive devices, resulted in the addition of over 190 new foreign entities to the list.

We maintain a high level of analytical and investigative effort focused on IED component procurement networks. In fact, today we are adding two companies in Hong Kong and four companies in Lebanon to the Entity List based on evidence that they purchased electronic components from foreign subsidiaries of U.S. firms and then resold the components to persons in Iran and Iraq. These same components were later found in Iraq in unexploded IED's and related materials.

This is a dramatic example of how BIS's enforcement effort can have a direct impact on the lives on our troops, and also shows the sophistication of our investigative work and how it can succeed in closing down illicit procurement networks overseas.

Use of the Entity List highlights our focus on the prevention of violations, and the public naming of individuals and entities that are involved in or pose a significant risk of engaging in illicit export activity. This widely used proscribed parties list takes advantage of the automated name screening infrastructure that exists in banks, trading companies and manufacturing enterprises worldwide, which I'm sure you are all familiar with.

This approach can effectively shut down these networks, and prevents resellers and other parties in the United States and overseas from inadvertently doing business with them.

However, for this to work, proscribed parties screening must be part of company due-diligence. This means effective procedures that ensure that electronic or manual screening is executed at any point in the order management and delivery process where one of these parties may become involved in an export transaction. It also means that a complete list must be used – including Entities, Denied Parties, and Specially Designated Nationals.

To make this easier, we have made a consolidated, up-to-date proscribed parties list available from a government source for the first time; it contains over 24,000 entities and can be downloaded from www.export.gov/ecr.

In terms of penalties, we continue to support and apply the principles that were outlined in the Penalty Guidance issued by BIS in 2003. However, we will be looking at ways to make the assignment of penalties more predictable, and will be considering different analytical approaches such as those found in the 2009 Guidelines of the Office of Foreign Assets Control.

We have prosecuted a number of precedent-setting cases recently, and I would like to mention a few this afternoon.

As Under Secretary Hirschhorn has noted, BIS will take a harder line when it comes to willful misconduct. Historically, we have sought penalties more so against companies rather than individual employees.

Now, when a violation is a deliberate action of an individual, we are making an extra effort to determine whether it would be appropriate to seek penalties against the individual or against a supervisor who is complicit in deliberate violations by subordinates.

Since the Under Secretary announced this policy focus last year, we have directed our agents and analysts to factor in this approach as they track down and assemble information for both administrative and criminal cases. We fully expect this policy to bear fruit in multiple cases in the near future, and we are already seeing results in a few situations.

For example, an important case that was settled last December involved the Chinese subsidiary of the U.S.-based PPG Industries. PPG pled guilty to actions that caused the illegal export, reexport and transshipment of high-performance coatings from the U.S. to the Chasma 2 Nuclear Power Plant in Pakistan via China, a shipment to an Entity List party that required a U.S. export license.

The case dramatized the critical role that parent companies play in monitoring the activities of their subsidiaries in dealing in U.S.-origin items that are subject to U.S. export controls. The case's \$3.75 million in criminal and civil fines represent one of BIS's larger monetary penalties.

This is a significant prosecution, but the story does not end there. In this case, a regional sales manager for PPG conspired with others to bring about this unlawful export. As a result, the sales manager was charged separately, required to receive compliance training, and made subject to a 15-year suspended denial order. Earlier this month, Xun Wang, a former Managing Director of PPG Paints Trading (Shanghai) was also arrested in the same case.

These are clear examples of the policy of pursuing both the company and culpable individual employees. Going forward, we will see more prosecutions and administrative sanctions along these lines.

Another significant recent case involved Anvik Technologies of Malaysia and Hong Kong. Anvik used a worldwide network of "virtual offices" to procure items for ultimate shipment to Iran. "Virtual Offices," for those of you who have not heard the term, are organizations that provide a variety of services to clients which create the image or impression that an entity is operating from a particular facility when in fact it is somewhere else.

In this case, one of the "virtual offices" was in Chicago, which provided the impression to U.S. vendors that they were shipping to a U.S. entity, when in fact the items would be forwarded outside the company, and ultimately to Iran.

This case demonstrates an important phenomenon in international trade: the development of a global order management, payment and delivery infrastructure that can easily be accessed and used for a very wide range of items.

The problem is that it can be exploited by bad actors to divert items in violation of the law, as the Anvik case demonstrates. We are looking at creative ways to attack this sort of illicit activity, including investigation of how responsible service providers may be for creating basic due diligence steps to prevent such abuse.

The majority of our criminal investigations now involve Iran as the ultimate end-user. While the United Arab Emirates was historically the point of diversion for many commodities, in recent years it has been eclipsed by Malaysia, Hong Kong and China. Many of these cases involve aircraft components.

The Office of Export Enforcement has also aggressively pursued illicit procurement activities of other countries. China is now the second most common country of end use in our criminal investigations, many of which involve electronic components diverted through Hong Kong.

As a result, the export of dual-use goods or technology for unauthorized use in China is one of OEE's top priorities. OEE has had a number of successful criminal and administrative cases related to items that could aid the Chinese military.

The most notable recent case involved the manager of a Massachusetts electronics company who was sentenced in January of this year to 36 months imprisonment for conspiring over a period of 10 years to export military electronics components and sensitive electronics used in military systems to the PRC. The Waltham, Mass., company she managed, Chitron Electronics, was fined \$15.5 million stemming from their convictions last year. Several Chinese military entities were among those receiving the equipment.

A final case I would like to review briefly is that of the Balli Group, which I also mentioned at last year's Update. Balli is a British-based company that illegally transferred U.S.-made Boeing 747's to Mahan Air of Iran. BIS issued a Temporary Denial Order to stop the transfer of additional planes, and to ground those that were already there. In February of 2010, Balli agreed to one of the largest civil penalties in the history of BIS- \$15 million, with \$2 million suspended.

Even though BIS suspended \$2 million of the penalty, and provided an installment schedule to make payment more practical, Balli violated the terms of the settlement and order by failing to make its payments in a timely fashion. In response, BIS in June revoked the suspension, and demanded the remainder be paid immediately, which payment in its entirety was subsequently made.

This demonstrates that the United States has both the means and the willingness to enforce settlement agreements in administrative cases involving violators outside the United States, and to make sure that whatever fines are levied are paid, and paid on time.

Now I would like to turn to the wider issue of Export Control Reform, and how BIS's export enforcement team participates in the process. In November, President Obama signed an Executive Order creating a central element of reform as it applies to Export Enforcement, the Export Enforcement Coordination Center.

The EECC will be a permanent committee with dedicated staff intended to ensure that BIS, State, the FBI, the U.S. Immigration and Customs Service, and the intelligence community coordinate their activities.

The EECC will enable U.S. agencies to better leverage their resources without duplicating or undermining each other's efforts in the field, and will allow all relevant agencies to approach investigations as full partners.

OEE will more closely coordinate its investigative efforts via the EECC. For example, when OEE initiates an investigation, it will send the names of suspects to the EECC for deconfliction. The EECC will then identify any other law enforcement agency identified in the deconfliction process that is investigating the same suspects. While many of these cases will be worked jointly,

when this is not the case, agents will be put in touch with each other so investigations can be coordinated.

The EECC is still in the very early stages of organizational development. A secure facility is being built in Northern Virginia to house the EECC, and individuals from participating agencies are being selected to staff it. We are now working with participating agencies on standard operating procedures for the EECC.

While we fully support appropriate liberalization of licensing requirements, both U.S. exporters and customers and resellers outside the United States dealing with sensitive U.S.-origin products need to know that U.S. controls apply, and that U.S. enforcement authorities can and will make sure that the rules are followed, despite the fact that no export license may be needed for the initial transaction.

In our review of regulatory initiatives such as the new License Exception STA, we have kept this firmly in view. The notification and certification requirement of STA, for example, not only guarantees that data on the control status of U.S.-origin items is passed along to resellers and customers, but that an auditable chain of custody is established.

This helps all of us, as it not only makes enforcement easier and more transparent, but places compliant U.S. companies on a more equal footing with resellers and customers overseas, who may not be as diligent in complying with U.S. controls after the initial export transaction.

A word about outreach. An important job of our 9 U.S. field offices and Export Control Officers in 6 overseas locations is outreach- providing information on compliance practice and enforcement issues to U.S. and overseas companies.

Our offices regularly conduct outreach visits to companies and universities; last year we conducted over 800 such visits. Of course, we also participate with BIS Export Administration and other agencies such as the FBI in outreach events such as this one for this very purpose.

To conclude, we in Export Enforcement are dedicated to our national security mission in this very challenging global environment. We want to make it crystal clear to bad actors, whether they contemplate diverting U.S. products, getting access to controlled U.S. technology, or circumventing U.S. embargoes, that we can and will catch up with them, and impose penalties to the fullest extent of the law.

With the support of our dedicated Agents in the field, our outstanding analysts in headquarters, and the quality legal support we receive from the Office of Chief Counsel, we will continue to strive to improve our work, and make President Obama's goal of export control reform a reality.

While we have had many successes in the past, there is much work that needs to be done, and we need your help to do it. I look forward to working with you on this important mission.

Thank You.